

Strike House Floor Amendment No. 31 by Eiland and substitute the following:

Amend CSHB 7 on page 333, between lines 22 and 23, by inserting a new Article 2A in the bill, to read as follows:

ARTICLE 2A. ALTERNATIVE COMPENSATION PILOT PROGRAM

SECTION 2A.001. Title 5, Labor Code, is amended by adding Subtitle D to read as follows:

SUBTITLE D. ALTERNATIVE COMPENSATION PROGRAMS

CHAPTER 551. PILOT PROGRAM ON USE OF INSURANCE POLICY TO PROVIDE

MEDICAL AND INCOME BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. In this chapter:

(1) "Alternative benefit plan" means a plan of health care benefits and income benefits offered under this chapter by an employer to an employee who sustains an injury in the course and scope of employment.

(2) "Commissioner" means the commissioner of insurance.

(3) "Course and scope of employment" has the meaning assigned by Section 401.011(12).

(4) "Department" means the Texas Department of Insurance.

(5) "Employer" means a person who employs one or more employees.

(6) "Employee" means a person in the service of another under any contract of hire, whether express or implied or oral or written. The term includes an employee employed in the usual course and scope of the employer's business who is directed by the employer to perform services temporarily outside the usual course and scope of the employer's business. The term does not include an independent contractor or the employee of an independent contractor.

(7) "Group health insurance policy" means a group, blanket, or franchise insurance policy that provides benefits for health care services resulting from accident, illness, or disease. For purposes of this chapter, the term includes a group hospital service contract or a group subscriber contract.

(8) "Program" means the alternative benefit plan pilot program established under this chapter.

(9) "Qualified insurance policy" means a group health insurance policy approved by the commissioner as provided by Section 551.051.

Sec. 551.002. EXPIRATION. The program is abolished and this chapter expires effective September 1, 2009.

[Sections 551.003-551.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF

COMMISSIONER AND DEPARTMENT

Sec. 551.051. EFFECT OF EMPLOYER PARTICIPATION. An employer who elects to participate in the program under this chapter is considered a subscribing employer to the workers compensation system of this state for all purposes under Subtitle A.

Sec. 551.052. IMPLEMENTATION OF PROGRAM; POLICY APPROVAL PROCESS. (a) The commissioner shall develop and operate a pilot program under which an employer may offer an alternative benefit plan to the employer's employees through a qualified insurance policy that:

(1) provides health care benefits to the employees, including benefits for an injury sustained by an employee in the course and scope of the employee's employment; and

(2) qualifies as provision of medical benefits for purposes of workers' compensation insurance coverage as described by Subtitle A.

(b) Before an employer may use a qualified insurance policy for employee health care benefits under this chapter, the employer must submit the policy to the department for approval in the manner prescribed by the commissioner, accompanied by any filing fee set by the commissioner by rule.

(c) The commissioner by rule shall adopt guidelines for the approval of policies submitted to the department under this section. The guidelines must require that the policy include limits and coverages for health care services, including hospitalization, that are at least equivalent to the limits and coverages applicable to the medical benefits provided to an

employee covered under Subtitle A.

(d) The commissioner shall review a policy submitted under Subsection (b) not later than the 30th day after the date the policy is submitted to the department. If the commissioner disapproves a policy, the department shall notify the employer who submitted the policy not later than the fifth day after the date on which the policy is disapproved.

(e) If the commissioner approves the policy, the department shall notify the employer not later than the 10th day after the date of the final approval. The employer may begin using the policy for benefits under this chapter as of the date of the final approval.

Sec. 551.053. COVERAGE FOR INCOME BENEFITS; APPROVAL. (a) If a qualified insurance policy is approved under Section 551.051, the employer may obtain an insurance policy from any insurer authorized to engage in the business of workers' compensation insurance in this state to provide coverage for each employee of the employer, or the legal beneficiary of a deceased employee, against a loss caused by:

(1) any loss of wages incurred as a result of an accident, illness, or disease, regardless of whether the accident, illness, or disease is caused by or directly related to the employee's employment; or

(2) the death of the employee.

(b) The employer must submit the indemnity policy to the department for approval in the manner prescribed for approval of a policy under Section 551.052.

(c) The commissioner by rule shall adopt guidelines for the approval of a policy submitted to the department under this section. The guidelines must require that the policy provide coverage for:

(1) income benefits in the manner provided by Chapter 408D; and

(2) death and burial benefits in the manner provided by Chapter 408E.

Sec. 551.054. RULEMAKING. The commissioner shall adopt rules as necessary to implement the duties of the department under this chapter.

Sec. 551.055. REPORT TO LEGISLATURE. Not later than December 1 of each year, the commissioner shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature regarding the status and results of the program.

[Sections 551.056-551.100 reserved for expansion]

SUBCHAPTER C. OPERATION OF PROGRAM

Sec. 551.101. EMPLOYER AUTHORIZATION TO OFFER ALTERNATIVE BENEFIT PLAN. (a) Notwithstanding Subtitle A, a subscribing employer who elects to participate in the program may offer an alternative benefit plan to provide benefits to an employee who sustains an injury in the course and scope of the employee's employment. An employer may not offer an alternative benefit plan other than through the program as provided by this chapter.

(b) An employer may offer an alternative benefit plan under this chapter only through:

(1) health insurance coverage provided through a qualified insurance policy; and

(2) indemnity coverage provided through a policy approved by the commissioner.

Sec. 551.102. ELIGIBILITY TO PARTICIPATE IN PROGRAM. An employer is only eligible to participate in the program if the employer elected to obtain workers' compensation insurance coverage under Subtitle A on or before January 1, 2005. An employer who did not elect to obtain workers' compensation insurance coverage under Subtitle A on or before January 1, 2005 may not participate in the program.

[Sections 551.104-551.150 reserved for expansion]

SUBCHAPTER D. PROVISION OF ALTERNATIVE BENEFIT PLAN THROUGH QUALIFIED INSURANCE POLICY AND ENDORSEMENTS

Sec. 551.151. RESPONSIBILITIES OF EMPLOYER. (a) An employer who elects to participate in the program shall:

(1) pay any coinsurance or deductible otherwise imposed on the insured employee for any compensable work-related injury; and

(2) continue the payment of wages to an insured employee until that employee begins to receive income benefits

through the indemnity insurance policy under Section 551.052.

(b) If an employee receives benefits under an alternative benefit plan, the employer shall maintain a qualified insurance policy and indemnity insurance policy for the benefit of that employee until the benefits to which the employee is entitled have been paid. A qualified insurance policy and indemnity insurance policy required to be maintained under this subsection must provide benefits adequate to pay all benefits to which the employee is entitled.

Sec. 551.152. SUBROGATION. (a) This section applies to an action to recover damages for personal injuries or death sustained by an employee in the course and scope of employment against:

(1) an employer who has obtained a qualified insurance policy and indemnity insurance policy covering that employee; or

(2) a third party.

(b) A judgment against an employer shall be reduced to the extent that the employee has been compensated or is entitled to be compensated under the employer's qualified insurance policy or indemnity insurance policy. A judgment reduced under this subsection shall be reinstated to the extent that the qualified insurance policy or indemnity insurance policy are canceled or otherwise fail to fully compensate the employee or a legal beneficiary of the employee to the extent provided by the policies.

(c) An insurance carrier that is liable for the payment of benefits to the employee or a legal beneficiary of the employee is subrogated to the rights of the employee or legal beneficiary against a third party.

[Sections 551.153-551.200 reserved for expansion]

SUBCHAPTER E. EFFECT OF ALTERNATIVE BENEFIT PLAN

Sec. 551.201. APPLICATION OF SUBTITLE A. Subtitle A applies to an employer who provides an alternative benefit plan in the manner prescribed by this chapter.

Sec. 551.202. CONTRACT REQUIREMENTS. A person who requires an employer, as a prerequisite to entering into a contract with that employer, to present evidence of workers' compensation insurance coverage shall accept instead of that evidence a qualified insurance policy and indemnity insurance policy issued as

provided by this chapter from an employer who obtains and maintains in effect a qualified insurance policy and indemnity insurance policy.

SECTION 2A.002. (a) The commissioner of insurance shall adopt rules as required by this article not later than January 1, 2006.

(b) Subchapter E, Chapter 551, Labor Code, as added by this article, takes effect March 1, 2006, and applies only to an alternative benefit plan entered into on or after that date.

SECTION 2A.003. Except as provided by Section 2A.002(b) of this article, this article takes effect September 1, 2005.